

1 JUDGE STIRMER: When will you be prepared to
2 exchange your exhibits, Mr. Miller?

3 MR. MILLER: Well, if we have a hearing date
4 of October 27th, two weeks in advance of that.

5 JUDGE STIRMER: That would be the 13th of
6 October.

7 MR. MILLER: Of October. Yes.

8 JUDGE STIRMER: All right.

9 MR. MILLER: Is that on a Tuesday?

10 JUDGE STIRMER: That's a Tuesday. That will
11 give you about a month to prepare your case.

12 MR. MILLER: That's not a lot of time, but I
13 guess it could be done on an expedited basis.

14 As an aside, the information as to the cable
15 telephone cross ownership interests, I'm not sure that
16 the Bureau would pursue identifying those potential
17 violations at this point because as the Order to Show
18 Cause makes clear, the show cause order to cease and
19 desist applies only to the broadcast and cable
20 interest. It doesn't relate to the common carrier and
21 MDS interests. And those were only asked to be listed.
22 So at this point, I'm not sure that the Bureau would
23 pursue making a case relating to those common carrier
24 interests when you wouldn't be asked to order them to
25 cease and desist from those anyway.

1 It seems to us that the Commission was only
2 asking for information about those interests. Now, we
3 may at some point want to seek a cease and desist order
4 as to those interests too. But at this point, the
5 order doesn't contemplate that.

6 JUDGE STIRMER: All right. Paragraph 5 lists
7 the rules and the statutory provisions which are
8 encompassed within this show cause order. Is that
9 correct?

10 MR. MILLER: Paragraph 5 specifically says
11 that it's contemplated that you can direct -- well, you
12 can issue an order directing them to cease and desist
13 from violating -- and they specify Sections 73.3555,
14 76.501(a) of the Commission's rules, and Section 613 of
15 the Communications Act.

16 The next paragraph, however, where it asks
17 them to list the ownership interests that they have --
18 the attributable interests -- adds two sections that
19 are not in paragraph 5. They add to Section 21.912 and
20 63.54, which relate to the common carrier interests and
21 MDS interests.

22 JUDGE STIRMER: So that's not encompassed
23 within what I can order them --

24 MR. MILLER: That's right.

25 JUDGE STIRMER: -- to cease and desist from

1 doing.

2 MR. MILLER: That's right.

3 JUDGE STIRMER: Do you agree with that, Mr.
4 Naftalin.

5 MR. NAFTALIN: So far, Your Honor, that's
6 right.

7 JUDGE STIRMER: Okay. I just want to get
8 going on the other aspects of your holdings, Mr.
9 Naftalin.

10 MR. MILLER: I believe that's the reason.
11 They didn't know what his other interests were and they
12 were asking him to list them. At this point, our
13 evidence probably would not go to showing violations as
14 to those common carrier rules because you couldn't
15 issue a cease and desist order anyway.

16 JUDGE STIRMER: Very well. All right. So
17 we'll require the Bureau to exchange their direct case
18 on October 13th. And I'll require you, Mr. Naftalin,
19 to exchange whatever case you have on October 20th.

20 MR. NAFTALIN: That's fine, Your Honor. I
21 have one request, and that is, if the Bureau should by
22 any chance -- which I don't think would be appropriate,
23 but if it should by any chance that it's going to
24 expand it's case into the other rules, then I'd like to
25 know about it in advance because given only week

1 between the two sets of exhibits, obviously we have to
2 advance preparation.

3 JUDGE STIRMER: I understand that. But I
4 don't think that's contemplated because this order, as
5 Mr. Miller noted, I have no jurisdiction under this
6 order to require you to cease and desist doing anything
7 that isn't included within paragraph 5.

8 MR. MILLER: Very well, Your Honor.

9 JUDGE STIRMER: That's the way I look at this
10 order. Is this the type of case where you think we are
11 going to need cross examination of witnesses?

12 MR. NAFTALIN: We need to make provision for
13 it if necessary. It looks like the sort of thing where
14 the facts may turn out to be not in dispute.

15 MR. MILLER: You know, maybe they will
16 question our engineering showings and will want to call
17 an engineer for cross examination, or they may put on
18 some evidence saying that the interests aren't
19 attributable for one reason or another. I think we
20 need to contemplate having some cross examination.

21 JUDGE STIRMER: All right. I will then
22 require Mr. Naftalin to notify the Bureau of witnesses
23 you want on the same day that you make your exchange --

24 MR. NAFTALIN: Yes, Your Honor.

25 JUDGE STIRMER: -- on October 20th. And the

1 Bureau, I'll give you 'til the 23rd to notify Mr.
2 Naftalin of any witnesses that you may need that are
3 going to sponsor his evidence.

4 Are there any other procedures that you think
5 we have to establish to govern the hearing?

6 MR. MILLER: Well, you had indicated you were
7 going to establish a note for notifying about the
8 personal interview.

9 JUDGE STIRMER: When do you think you'll be
10 able to have an answer for us on that, Mr. Naftalin, on
11 the personal interview?

12 MR. NAFTALIN: I think if you give us a week
13 that will do it.

14 JUDGE STIRMER: That would be until the 16th.
15 Would that be all right, Mr. Miller?

16 MR. MILLER: Well, I think they could do it
17 by the end of this week.

18 JUDGE STIRMER: Can you speed that up, Mr.
19 Naftalin?

20 MR. NAFTALIN: Anything is possible, Your
21 Honor.

22 JUDGE STIRMER: Well, let me say this.
23 Notify Bureau counsel by Friday afternoon when it will
24 be convenient to have this personal meeting. And you
25 can arrange a mutually convenient time and date with

1 Bureau counsel. Just find out the schedule of Mr.
2 Gabelli, when he'll be available or one of his
3 representatives or -- I don't know how you're going to
4 work it out.

5 MR. NAFTALIN: Exactly, Your Honor. The
6 question you just asked -- well, I wanted a little bit
7 more time actually.

8 JUDGE STIRMER: Will a representative of Mr.
9 Gabelli be sufficient for this personal interview?

10 MR. MILLER: Mr. Gabelli under the Act has a
11 right to a personal interview at a field office nearest
12 his residence. If he wants to do something less than
13 that, we're amenable to it.

14 JUDGE STIRMER: All right.

15 MR. MILLER: But he has the right to that.
16 If he wants a personal representative and wants to have
17 it someplace else, that's find. It's his decision.

18 JUDGE STIRMER: Okay. I would want the time
19 and place for this personal interview established by
20 close of business, Friday, September 11th.

21 MR. MILLER: And if they are choosing
22 something other than what the Act provides for, we'd
23 like them to make it clear that this is their choice
24 and they are doing it in lieu of what the Act provides
25 for.

1 JUDGE STIRMER: You mean by having the
2 interview here in Washington?

3 MR. MILLER: By having a personal
4 representative of his or by having it at a location
5 other than the --

6 JUDGE STIRMER: The field office?

7 MR. MILLER: -- the field office.

8 JUDGE STIRMER: All right.

9 MR. NAFTALIN: That's acceptable, Your Honor.

10 JUDGE STIRMER: Okay. Very well. Is there
11 anything further we have to discuss?

12 (No response.)

13 JUDGE STIRMER: All right, gentlemen. I hope
14 you keep the lines of communication open and try and
15 have resolved any factual disputes that need to be
16 resolved. And you can argue the legal significance of
17 these facts in your proposed findings and conclusions.
18 The way I see it, I don't think there should be much of
19 a factual dispute as to what's owned and where those
20 interests are. Then you can present your arguments as
21 to whether or not this constitutes a violation of the
22 applicable rules and statutes.

23 Is there anything further?

24 (No response.)

25 JUDGE STIRMER: If there's need for

1 additional conference, let me know and I'll schedule
2 one. If there's nothing further, we'll stand in
3 recess.

4 (Whereupon, at 9:45 a.m., the pre-hearing
5 conference was recessed until further notice.)

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C E R T I F I C A T E

This is to certify that the attached proceedings
before the FEDERAL COMMUNICATIONS COMMISSION

in the matter of: MARIO J. GABELLI

Docket Number: 92-201

Place: WASHINGTON, DC

Date: SEPTEMBER 9, 1992

were held as herein appears, and that this is a true
and accurate record of the proceedings.

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